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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. JOFAMA COLEMAN, Defendant and Appellant.	B202597 (Los Angeles County Super. Ct. No. YA059765)

APPEAL from a judgment of the Superior Court of Los Angeles County, Eric C. Taylor, Judge. Affirmed.

Patricia Ihara, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Steven D. Matthews and David E. Madeo, Deputy Attorneys General, for Plaintiff and Respondent.

Jofama Coleman appeals from the judgment and order denying his motion for new trial after a jury convicted him of first degree murder (Pen. Code § 187, subd. (a)). Coleman contends the jurors' inadvertent review of information that disclosed he had a prior felony conviction and had been arrested for carrying a concealed weapon one month before the crime for which he was being tried constituted prejudicial misconduct warranting reversal of his underlying conviction. Although we agree the jurors' review of the inadmissible booking information was misconduct, we affirm the order denying the new trial and the underlying judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Murder*

On the evening of May 10, 2003 Jose "Chino" Robles and his family were hosting a barbecue in their backyard on 101st Street in south Los Angeles. Around 9:00 p.m. Robles, who was a member of a tagging crew known as "No Control" or "NC," decided to walk to a nearby liquor store. On the way down 101st Street, he met another member of NC, Albert Segundo, who was heading to the Robles barbecue. Segundo had just seen Coleman, the leader of the rival tagging crew "NGA," accompanied by another rival gang member known as "Drips," driving slowly along the street in a white van with wood paneling.[1] Segundo warned Robles the liquor store was in "enemy territory." Robles shrugged off the warning, replying he would be fine because he had his knife.

Segundo walked across the street from the Robles home to pick up a friend, crossed the street back to the sidewalk in front of the Robles home and, seconds later, heard two gunshots. Segundo turned and saw Robles holding onto a fence rail as Drips fired additional shots at Robles. Segundo watched as Drips reentered the van through the passenger door. After the van sped past the Robles home, Segundo and his friend hurried to a car and gave chase. At a stop sign a couple of streets away, Drips got out of the van

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[1] Segundo testified he had flashed an NC sign at Coleman and Drips as they drove by. Sensing there might be trouble, he warned another friend, Miko, to take some young women who were standing in the street back into the Robles home.

and pointed a blue steel semiautomatic gun at Segundo's friend's car. Segundo's friend turned the car around and returned to the Robles home.

2. *The Identification of Coleman*

At trial four witnesses identified Coleman as the driver of the white van: Segundo, who attended high school with Coleman and estimated he had seen him hundreds of times before the shooting; Robles's younger brother, Jesse, who ran to the street when he heard shots and saw the van speed away; Jesse's friend, Carlos Lopez, who also ran to the street when shots were fired and was standing next to Jesse when the van drove by; and Maria Renteria, who rented the house behind the Robles home and had just parked her own van near the Robles home when the shooting began.

a. *Albert Segundo*

Segundo testified he recognized Coleman when the white van passed him before the shooting and again when the shooter, Drips, opened the door to climb back into the van after the shooting. Segundo explained that opening the door illuminated the van's interior. Segundo again got a close look at Coleman when the van drove past the Robles home immediately after the shooting and a fourth time after the chase, when Drips pointed his gun at Segundo and his friend. According to Segundo, Coleman's head was shaved; he was wearing a black T-shirt; and he had a steel bar piercing his left eyebrow. Segundo testified he was 100 percent certain Coleman was the driver of the van.

Coleman's counsel sought to impeach Segundo by eliciting testimony Segundo had initially blamed two local Hispanic gang members for the shooting in an interview with Los Angeles Sheriff deputies. Segundo admitted he had lied to the deputies but claimed he had been afraid of retaliation from Coleman and his crew.[2]

b. *Jesse Robles*

Jesse Robles was at the barbecue in his family's backyard when he heard two shots and raced to the street. As he ran, he heard another 13 shots. The shooting had ended by the time he reached the gate of the driveway. He was soon joined by his friend,

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[2] In order to compel Segundo to testify, the court issued a body warrant authorizing his arrest and detention pending completion of his testimony.

Carlos Lopez. Jesse, who estimated he had seen Coleman (whom he knew by his moniker "Illusion") more than 50 times in the neighborhood, recognized Coleman both when Drips reentered the passenger side of the van and when the van drove past him. As Jesse and Lopez stood there, they acknowledged to each other Coleman was the driver. Jesse was certain the driver was Coleman even though Coleman usually drove a green Camry and he had never seen Coleman driving a white van.

Although Jesse told Lopez he recognized Coleman the night of the shooting, he did not tell sheriff's deputies he knew the attackers until two days after the shooting. He claimed he wanted to avoid testifying at trial and decided to come forward only when his family asked him to do so.

c. *Carlos Lopez*

Carlos Lopez was at the Robles barbecue when the first shots were fired. He ran after Jesse Robles to the street, arriving in time to see the white van drive by. According to Lopez, the van was illuminated by the headlights of another van, allowing him to see Coleman, whom he too knew as the leader of NGA. Coleman had a shaved head and was wearing a black T-shirt. Lopez was contacted by sheriff's deputies the day after the shooting and identified Coleman as the shooter.

d. *Maria Renteria*

As Maria Renteria parked her van near the Robles driveway, her headlights illuminated the white van, which was stopped in the middle of 101st Street some distance down the street. Renteria watched as a dark-skinned man got out of the white van, crossed in front of it and began shooting at what she thought was a car parked on the side of the street. From the light of her headlights and the interior light of the van when the shooter climbed back in, she was able to see the driver, whom she described as a Black man. Although she was unable to identify Coleman in a photographic lineup, at trial she testified he "looked like" the driver.

3. *Corroboration of Coleman's Identification and Motive*

To establish preexisting animosity between Coleman and Robles, the People elicited testimony about three previous incidents. First, Jesse testified that, sometime

before the shooting, he was in an alley watching a friend tag a wall with the acronym "SAP" and cross out the tag "NGA." Coleman drove up with his brother, Jeremy, and challenged Jesse and his friend, asking why they were crossing out his "hood." Jesse's friend ran, chased by Jeremy. Coleman approached Jesse, took his bicycle and threw it over a gate.

Second, Segundo testified he saw Robles and some others "jump" Coleman around the corner from the Robles home a month or two before the shooting.

Third, three witnesses, including Lopez, testified about an incident involving Coleman and Robles that occurred on the afternoon of the murder. During the early afternoon, Robles and some friends were standing in front of a home on 102nd Street around the corner from the Robles home. To their surprise, Jeremy Coleman walked by on his way to visit his girlfriend. Jeremy asked Robles where he was from, meaning to what tagging crew did he belong; but Robles did not answer. Jeremy identified himself as NGA; and Robles laughed at him, prompting Jeremy to threaten to get his brother. Robles then identified himself as NC and said, "Fuck NGA." When Jeremy started to walk away, Robles chased him and hit him on the arm with a baseball bat. Robles later told Lopez Jeremy had called him a "bitch."

About 30 minutes after the confrontation, Coleman and Jeremy drove to the home on 102nd Street in Coleman's green Camry. Robles was no longer there. Coleman asked Lopez, "Which one of you was trying to fight my brother?" When no one answered, Jeremy asked where Robles had gone. After he was told Robles had returned to his house, Jeremy threatened "to get Chino or anybody from NC."[3] According to Lopez, Coleman was wearing a black T-shirt.

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[3] Jeremy, who testified under a grant of immunity, disputed Lopez's account and denied he had ever challenged Robles. Jeremy also claimed he had been with Coleman at the time of the shooting, but a sheriff's deputy impeached Jeremy's testimony with his prior statement Coleman had dropped him off earlier in the evening.

The People also introduced a surveillance videotape from a video store located five to ten minutes from the crime scene, taken at 9:46 p.m. on the night of the shooting, which showed Coleman wearing a black T-shirt over a white T-shirt.

4. *The Verdict and Alleged Juror Misconduct*

Coleman was convicted of first degree murder and sentenced to a state prison term of 25 years to life. Some weeks later, in response to a letter from the trial court thanking jurors for their service, juror No. 5 wrote back: "There was one concern about the deliberation process that still resonates in my mind and I would like to know whether it is normal procedure in order to put my consci[ence] at rest -- at ease, rather. During the hearing, a picture of Mr. Coleman was presented as evidence. Later when this picture was presented in the jury room it entailed information about the defendant detailing a prior arrest which occurred a month before the incident in question. I know for a fact that the details of this prior arrest influenced the jury's decision in determining the final verdict. Since Mr. Coleman's past was not brought up during the hearing, I have been wondering whether the information about his previous arrest should have been presented to the jury during the deliberation process. I have pondered this question for awhile and I would like to have an answer for my peace of mind."

After conferring with counsel, the court determined that People's exhibit No. 3, a booking arrest report, had been folded in half during trial to obscure arrest information while allowing the witnesses to see a photograph of Coleman. Inadvertently, the complete exhibit had been sent to the jury room during deliberations without first removing the booking information.[4] The court requested all jurors, including juror No. 5, return to court to investigate the potential impact. Only one juror failed to come. Each of the others testified as to their recollection of the exhibit. Of those 11 jurors, five, including the foreperson of the jury, stated they had not seen the booking information and did not recall any discussion related to the information. The remaining six jurors

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[4] No objection to the exhibit appears on the record. However, defense counsel contended, and the prosecutor admitted, they had not intended for the jury to see the booking information.

remembered reading the arrest information and inferred Coleman had been previously arrested for carrying a loaded gun.[5] Only four of the six remembered any discussion of the exhibit. Juror No. 5 recalled one of the jurors commenting Coleman had been previously arrested for carrying a loaded weapon and another responding, "We're not supposed to consider that." She knew other jurors had read the information but did not recall any further conversation, although she described it as "kind of like a white elephant in the room that you don't talk about." Juror No. 2, however, gave a slightly different perspective: She recalled seeing others near her read the information but they spoke only briefly about "the tragedy of people getting in bad situations and neighborhoods and so forth. . . . A couple of us on the jury were raised in that area and we reflected more on those issues, not explicitly what that said." "We all agonized over this, you know, about the tragedies and so on . . . , but it was more in that context." She also overheard a juror, speaking of the victim and the defendant, observe that none of "these felons were choirboys," but the comment was not made directly in reference to the booking information. Juror No. 4 recalled someone expressing surprise the information had been included but did not recall further conversation about it and did not see the exhibit passed around. The only discussion juror No. 11 remembered was someone (he thought the foreperson) reminding jurors the information could not be considered.

Coleman moved for a new trial based on juror misconduct. The court denied the motion, concluding the inadvertent disclosure of the information did not rise to the level of juror misconduct. The court also expressly found the overwhelming evidence against Coleman negated any prejudice and rendered the error harmless.

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[5] The booking information includes Coleman's name and booking number, the arrest date of April 6, 2003, his birthdate (January 16, 1983), sex, race, height, weight and charge information recorded as follows: "496(A)/PC/F/REC KNWN STOLN PROP $400+; 12031(A)(2)(D)/PC/F/C/LOADED F/ARM:PROHIB/ETC; 12031(A)(1)/PC/F/CARY LOAD F/ARM:PUB:S/CIR; 12025(A)(1)/PC/F/CCW IN VEH W/PR FEL CONV."

CONTENTION

Coleman contends the trial court committed reversible error in denying his motion for a new trial, asserting juror No. 5's letter itself demonstrates the prejudicial nature of the inadvertent disclosure of the booking information and the testimony of other jurors confirms the information was seen by most jurors. Coleman also contends that prejudice was compounded by the prosecutor's allegedly inadvertent reference to booking information while examining a witness, which itself constituted prejudicial prosecutorial misconduct.[6]

DISCUSSION

1. *Standard of Review of a Motion for a New Trial Based on Juror Misconduct*

A criminal defendant may move for a new trial on the ground "the jury has received any evidence out of court, other than that resulting from a view of the premises, or of personal property." (Pen. Code, § 1181, subd. 2.) "A sitting juror's involuntary exposure to events outside the trial evidence, even if not 'misconduct' in the pejorative sense," is nonetheless improper. (*In re Hamilton* (1999) 20 Cal.4th 273, 294-295; see *People v. Holloway* (1990) 50 Cal.3d 1098, 1108, 1110 disapproved on another ground in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1 [whether the receipt of extrajudicial material was deliberate or inadvertent, it is misconduct for jury to receive information "in connection with the subject-matter of the trial which would be at all likely to influence jurors in the performance of [their] duty"].)[7]

"'As a general rule, juror misconduct "raises a presumption of prejudice that may be rebutted by proof that no prejudice actually resulted." [Citations.]' (*In re Hitchings* (1993) 6 Cal.4th 97, 118.) In determining whether misconduct occurred, '[w]e accept the trial court's credibility determinations and findings on questions of historical fact if

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[6] On August 20, 2008 Coleman filed a petition for writ of habeas corpus that we summarily deny by separate order. (See *In re Coleman*, B210118 (order filed December 30, 2008).)

[7] The parties agree the booking information was not admissible evidence. (See *People v. Anderson* (1978) 20 Cal.3d 647, 650-651 [evidence of mere arrests is inadmissible because it suggests "bad character"].)

supported by substantial evidence. [Citations.] Whether prejudice arose from juror misconduct, however, is a mixed question of law and fact subject to an appellate court's independent determination. [Citations.]' (*People v. Nesler* (1997) 16 Cal.4th 561, 582 (lead opn. of George, C. J.).)" (*People v. Majors* (1998) 18 Cal.4th 385, 417; accord, *People v. Danks* (2004) 32 Cal.4th 269, 303 (*Danks*).) Moreover, as the Supreme Court has repeatedly cautioned, "We emphasize that before a unanimous verdict is set aside, the likelihood of bias . . . must be *substantial*. [T]he criminal justice system must not be rendered impotent in quest of an ever-elusive perfection. The jury system is fundamentally human, which is both a strength and a weakness. [Citation.] Jurors are not automatons. They are imbued with human frailties as well as virtues. If the system is to function at all, we must tolerate a certain amount of imperfection short of actual bias. To demand theoretical perfection from every juror during the course of a trial is unrealistic." (*In re Carpenter* (1995) 9 Cal.4th 634, 654-655 (*Carpenter*); see *Danks*, at p. 304.)

The People contend the court properly concluded the inadvertent disclosure of the booking information did not constitute jury misconduct, pointing to the Supreme Court's analysis of a similar instance of inadvertent jury contamination: "When, as in this case, a jury innocently considers evidence it was inadvertently given, there is no misconduct. The situation is the same as any in which the court erroneously admits evidence. The fact that the evidence was inadvertently admitted and then withdrawn does not elevate the error to one of misconduct. There has been merely 'an error of law . . . such as . . . an incorrect evidentiary ruling.' [Citation.] Such error is reversible only if it is reasonably probable that a result more favorable to the defendant would have been reached in the absence of the error." (*People v. Cooper* (1991) 53 Cal.3d 771, 836.)

More recently, however, in *People v. Nesler*, *supra*, 16 Cal.4th 561 and *Danks*, *supra*, 32 Cal.4th 269, the Supreme Court reasoned inadvertence in disclosure should not alter the analysis of a juror's exposure to extraneous information. As the Court summarized in *Danks*, "We have previously held that 'a juror's inadvertent receipt of information that [has] not been presented in court falls within the general category of

"juror misconduct."' (*Nesler*, [at p.]579'.) 'Although inadvertent exposure to out-of-court information is not blameworthy conduct, as might be suggested by the term "misconduct," it nevertheless gives rise to a presumption of prejudice, because it poses the risk that one or more jurors may be influenced by material that the defendant has had no opportunity to confront, cross-examine, or rebut.' (*Ibid*.)" (*Danks*, at p. 307.) Accordingly, we treat the disclosure here, inadvertent as it concededly was, under the rubric of juror misconduct.

2. *The Trial Court Did Not Err in Denying the Motion for a New Trial on the Ground of Jury Misconduct*

The standard for determining whether the inadvertent disclosure to jurors of Coleman's previous booking information was prejudicial and required the granting of a new trial is well established. "'[W]hen misconduct involves the receipt of information from extraneous sources, the effect of such receipt is judged by a review of the entire record, and may be found to be nonprejudicial. The verdict will be set aside only if there appears a substantial likelihood of juror bias. Such bias can appear in two different ways.'" (*Danks*, *supra*, 32 Cal.4th at p. 303.)

"'First, we will find bias if the extraneous material, judged objectively, is inherently and substantially likely to have influenced the juror.' (*Carpenter, supra*, 9 Cal.4th at p. 653.) 'Under this standard, a finding of "inherently" likely bias is required when, but only when, the extraneous information was so prejudicial in context that its erroneous introduction in the trial itself would have warranted reversal of the judgment. Application of this "inherent prejudice" test obviously depends upon a review of the trial record to determine the prejudicial effect of the extraneous information.' (*Ibid*.)" (*Danks*, at p. 303.) "Second, 'even if the extraneous information was not so prejudicial, in and of itself, as to cause "inherent" bias under the first test,' the nature of the misconduct and the 'totality of the circumstances surrounding the misconduct must still be examined to determine objectively whether a substantial likelihood of actual bias nonetheless arose.' (*Carpenter*, *supra*, 9 Cal.4th at pp. 653-654.) 'Under this second, or "circumstantial," test, the trial record is not a dispositive consideration, but neither is it

irrelevant. All pertinent portions of the entire record, including the trial record, must be considered. "The presumption of prejudice may be rebutted, inter alia, by a reviewing court's determination, *upon examining the entire record*, that there is no substantial likelihood that the complaining party suffered actual"' bias. (*Id.* at p. 654.)" (*Danks*, *supra*, 32 Cal.4th at p. 303.)

At the outset, we concur with the trial court's assessment of the booking information as not inherently prejudicial to the jurors' deliberation. The overwhelming evidence against Coleman more than rebuts the presumption he was unduly prejudiced by the disclosure of the information. In a different -- and closer -- case, we might conclude the jurors' exposure to a defendant's booking information, from which they could have gleaned he had a prior felony conviction and was carrying concealed firearms when he was arrested with stolen property worth more than $400, improperly infected the jury's deliberations. But this is not a close case. Coleman was identified as the driver of the van by three witnesses who knew him well. These same witnesses knew Robles had recently antagonized Coleman by picking on his younger brother and had heard Coleman threaten revenge. The trial court obviously viewed the case the same way and concluded the evidence against Coleman was overwhelming.

The jurors' statements concerning their reaction to the booking information confirms their focus properly remained on the evidence before them and not on the information he had previously been arrested on a weapons charge. Their comments reveal the jurors appeared to have discerned Coleman had been previously arrested for carrying a gun, but few, if any, appeared to understand the detail of the charges. Moreover, the impact of the information itself appeared minimal. It is evident only fleeting references were made to the information by one or two small groups of jurors. Nearly half of the jurors did not even recall knowing about the prior arrest. Unlike the offending juror in *Nesler*, who repeatedly and intentionally interjected outside information into deliberations when she disagreed with the positions of other jurors (see *People v. Nesler*, *supra*, 16 Cal.4th at p. 583), the jurors here who saw the booking

information mentioned Coleman's prior arrest only in passing and appeared to follow the court's instruction to consider only the evidence presented at trial.

Based upon our independent review of the evidence, therefore, we see no substantial prejudice resulting from the jurors' inadvertent review of the booking information.

3. *There Was No Prosecutorial Misconduct Warranting a New Trial*

"'The applicable federal and state standards regarding prosecutorial misconduct are well established. "'A prosecutor's . . . intemperate behavior violates the federal Constitution when it comprises a pattern of conduct so "egregious that it infects the trial with such unfairness as to make the conviction a denial of due process."'" [Citations.] Conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct under state law only if it involves "'"the use of deceptive or reprehensible methods to attempt to persuade either the court or the jury."'"'" (*People v. Navarette* (2003) 30 Cal.4th 458, 506.)

Coleman contends the People's failure to ensure its exhibit was properly redacted to exclude the booking information, coupled with the prosecutor's repeated reference to booking information she knew was not admissible, rise to the level of prosecutorial misconduct warranting a new trial. We disagree.

First, there is no evidence whatsoever the failure to redact the booking information was intentional or deceptive. While the error may have been careless on the part of the prosecutor, either party could have reviewed the exhibits prior to their submission to the jury to ensure the information was properly excluded.

We are more troubled by the prosecutor's use of the term "booking" or "booked" during her examination of the sheriff's deputy who arrested Coleman on April 5, 2003. The People called the deputy as a witness solely to introduce evidence of Coleman's distinctive eyebrow piercing, a detail that was noticed by Segundo and Jesse Robles on the night of the murder. Although the People had agreed not to mention Coleman had been arrested when he was contacted by police on the night of April 5, 2003, the prosecutor referred to Coleman having been booked that night a total of seven times.

Defense counsel elected not to object at the time and waited until the conclusion of the deputy's testimony to alert the court to the prosecutor's violation of their agreement. The prosecutor immediately agreed she had "screwed up" and apologized for her misstep. Asked whether he would like a curative instruction, defense counsel declined so as to not call more attention to the arrest. That decision was, of course, within his discretion but it underscores the passing nature of the prosecutor's comments.

Having already determined the jurors' receipt of the booking information during deliberations did not improperly infect their deliberations, we see no additional prejudice resulting from the prosecutor's references to Coleman having been booked on the night of April 5, 2003. Again, were this a closer case, we might have reached a different conclusion. In light of the strength of the evidence against Coleman, however, he was not substantially prejudiced by the prosecutor's statements. (See *People v. Barnett* (1998) 17 Cal.4th 1044, 1133 [reversal for prosecutorial misconduct warranted only if reasonably probable defendant would have received more favorable verdict absent such remarks].)

DISPOSITION

The judgment is affirmed.

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PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.